



C0204170---00004

CITATION

## THE STATE OF TEXAS

No. D-0204170

TEXAS MUTUAL INSURANCE COMPANY  
VS. MBA TRANSPORT OF COLUMBUS LLC ET AL

CITATION

136th JUDICIAL DISTRICT COURT  
of JEFFERSON COUNTY, TEXAS

To: ABBIKADIR, ADKAN

by serving at:  
816 RIDGE CREEK DRIVE  
CLARKSTON, GA 30021

DEFENDANT:

## NOTICE:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. Said answer may be filed by mailing same to: District Clerk's Office, 1085 Pearl, Room 203, Beaumont, TX 77701, (or if the case is designated as an E-file case, E-file through Lexis Nexis file and serve) or by bringing it to the office. The case is presently pending before the 136th District Court of Jefferson County sitting in Beaumont, Texas, and was filed on the 24th day of July, 2019. It bears cause number D-0204170 and is styled:

Plaintiff:

TEXAS MUTUAL INSURANCE COMPANY  
VS.  
MBA TRANSPORT OF COLUMBUS LLC ET AL

Defendant:

The name and address of the attorney for plaintiff (or plaintiff if pro se) is:

LAJZER, JOHN, Atty.  
2200 ALDRICH STREET  
AUSTIN, TX 78723 0

The nature of the demands of said plaintiff is shown by a true and correct copy of Plaintiff's PETITION (PLAINTIFF'S ORIGINAL) accompanying this citation and made a part thereof.

Issued under my hand and the seal of said court, at Beaumont, Texas, this the 26th day of July, 2019.

JAMIE SMITH, DISTRICT CLERK  
JEFFERSON COUNTY, TEXAS

BY

Deputy

Valencia

EXHIBIT

1

FILED  
DISTRICT CLERK OF  
JEFFERSON CO TEXAS  
7/24/2019 1:27 PM  
JAMIE SMITH  
DISTRICT CLERK  
D-204170

CAUSE NO. 2017-DCL-01633

TEXAS MUTUAL INSURANCE COMPANY	§	IN THE DISTRICT COURT
AS SUBROGEE OF ARTURO ELIZONDO	§	
	§	
VS.	§	JEFFERSON COUNTY, TEXAS
	§	
MBA TRANSPORT OF COLUMBUS, LLC	§	
AND ADKAN ABBIKADIR	§	_____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF THIS COURT:

COMES NOW, Plaintiff, Texas Mutual Insurance Company ("Texas Mutual") as Subrogee of Arturo Elizondo, complaining of Defendants MBA Transport of Columbus, LLC and Adkan Abbikadir, and for its cause of action would respectfully show this Court the following:

I. DISCOVERY LEVEL

1. Plaintiff intends to conduct discovery under Level III of TEX. R. CIV. P. 190.4 because although Texas Mutual seeks monetary relief of less than \$100,000.00, Arturo Elizondo may intervene to assert his own damages and such damages exceed \$100,000.00.

II. PARTIES

2. Plaintiff Texas Mutual is a mutual insurance company organized and authorized to do business under the laws of the State of Texas. Its principal office is located at 2200 Aldrich Street, Austin, Travis County, Texas, 78723.

1. MBA Transport of Columbus, LLC, is a limited liability company, and may be served with process by serving Abdiqani Mohamud, its registered agent, 2947 Northern Woods Ln, Columbus, Ohio 43231-3195 or by serving any duly authorized officer.



4. Defendant Adkan Abbikadir, an individual, who may be served with process at his usual place of residence, 816 Ridge Creek Drive, Clarkston, Georgia 30021, or wherever he may be found.

### III. VENUE

5. Venue is proper in this court because the motor vehicle accident that forms the basis of this suit occurred in Jefferson County, Texas.

### IV. BACKGROUND FACTS

6. On June 30, 2017, Texas Mutual issued a workers' compensation insurance policy to Tideport Distributing, the employer of Arturo Elizondo. This policy of insurance was in effect at the time Arturo Elizondo sustained injuries arising out of and in the course and scope of his employment. As a result, Texas Mutual was obligated to pay workers' compensation benefits to, and for the benefit of Arturo Elizondo. Texas Mutual files this action as subrogee of Arturo Elizondo as permitted by Section 417.001(b) of the TEXAS LABOR CODE. *Arturo Elizondo is not currently an active party in this suit, and Plaintiff Texas Mutual does not represent his interests.*

7. On July 26, 2017, Arturo Elizondo, a truck driver for Tideport Distributing, was operating a company 18-wheeler westbound on inside lane of IH-10 near Beaumont, Texas. Defendant Adkan Abbikadir was travelling westbound on the outside lane of IH-10 near Beaumont, Texas in an 18-wheeler owned by Defendant MBA Transport of Columbus, LLC. Defendant Adkan Abbikadir moved to the inside lane of IH-10 and rear-ended Arturo Elizondo's vehicle. The force of the impact caused injuries to Arturo Elizondo that required medical treatment. Defendant Adkan Abbikadir was cited at the scene of the accident for failure to control speed. At the time of the accident, Arturo Elizondo was acting within the course and scope of his duties with Tideport Distributing.

#### V. NEGLIGENCE OF THE DRIVER ADKAN ABBIKADIR

9. Defendant Adkan Abbikadir had a duty to observe and practice safe driving on the Texas roadways and a duty to exercise ordinary care. Nonetheless, Defendant Adkan Abbikadir breached those duties in the following ways: Failing to keep such lookout as an ordinary prudent person would have kept under the same or similar circumstances, failing to apply the brakes to his vehicle or failing to apply them in a timely manner to avoid the collision in question as an ordinary prudent person would have done under the same or similar circumstances, failing to control his speed, failing to take appropriate evasive action to avoid the collision, and failing to control his vehicle as an ordinary prudent person would have done under the same or similar circumstances. As a result of Defendant Adkan Abbikadir's breach of duty, Arturo Elizondo sustained serious physical injuries.

#### VI. NEGLIGENT ENTRUSTMENT

11. At the time of the collision, Defendant MBA Transport of Columbus, LLC ("MBA Transport") was the owner of the 18-wheeler driven by Defendant Adkan Abbikadir. Defendant MBA Transport loaned or permitted Defendant Adkan Abbikadir, a reckless and irresponsible driver, to take the vehicle for the purpose of operating it on the public highways of Texas. Defendant Adkan Abbikadir operated the vehicle with the knowledge, consent, and permission of Defendant MBA Transport. At such time, Defendant Adkan Abbikadir was unfit to safely operate a motor vehicle in that he was an incompetent, reckless, and an irresponsible driver, who was not competent to operate a motor vehicle in the State of Texas. Defendant MBA Transport knew, or in the exercise of due care, should have known, that Defendant Adkan Abbikadir was



an incompetent, unfit driver and would create an unreasonable risk of danger to persons or their property on the Texas highways.

#### VII. CAUSATION

12. Each of the Defendants' individual acts or omissions, whether taken singularly or in any combination, was a proximate cause of Arturo Elizondo's injuries and damages.

#### VIII. SUBROGATION AND DAMAGES

13. At the time of the accident, Arturo Elizondo was acting in the course and scope of his employment for Tideport Distributing. Texas Mutual is interested in the subject matter of this suit because it provided workers' compensation insurance to Arturo Elizondo's employer, Tideport Distributing. Texas Mutual, in discharging its liability under the workers' compensation insurance policy, has paid to or on behalf of Arturo Elizondo the amount of \$22,638.91 in medical and income benefits. This amount, which is subject to increase, is within the jurisdictional limits of the Court. Texas Mutual, by reason of such past and future payments, is subrogated to the rights of Arturo Elizondo against Defendants in this suit and hereby seeks damages in those amounts.

#### IX. PRAYER

14. WHEREFORE, PREMISES CONSIDERED, Texas Mutual prays that Defendants MBA Transport and Adkan Abbikadir be cited to appear and answer, and that upon trial of this cause, Texas Mutual be awarded judgment against said Defendants in the amount of its subrogation lien, which is currently \$22,638.91, pre-judgment interest on those elements of damages as allowed by law, and post-judgment interest on the damages from the date of the judgment until paid. Further, Texas Mutual prays that it recover its costs of court expended and that it have all

other and further relief, both general and special, at law or in equity, to which it may be justly entitled.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John B. Lajzer', is written over a horizontal line.

John B. Lajzer

State Bar No. 24074567

[johnlajzer@texasmutual.com](mailto:johnlajzer@texasmutual.com)

Jackie M. Kenyon

State Bar No. 11319875

[jkenyon@texasmutual.com](mailto:jkenyon@texasmutual.com)

2200 Aldrich Street

Austin, Texas 78723

(512) 224-7307

(512) 224-3214 – Facsimile

ATTORNEYS FOR PLAINTIFF, TEXAS

MUTUAL INSURANCE COMPANYAS

SUBROGEE OF ARTURO ELIZONDO